

AO 243 (Rev. 2/95)

**MOTION UNDER 28 USC § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY**

FILED

JUL 20 2016

CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
DEPUTY

(If movant has a sentence to be served in the future under a federal judgment which he wishes to attack, he should file a motion in the federal court which entered the judgment.)

MOTION TO VACATE, SET ASIDE, OR CORRECT SENTENCE BY A PERSON IN FEDERAL CUSTODY

Explanation and Instructions—Read Carefully

- (1) This motion must be legibly handwritten or typewritten, and signed by the movant under penalty of perjury. Any false statement of a material fact may serve as the basis for prosecution and conviction for perjury. All questions must be answered concisely in the proper space on the form.
- (2) Additional pages are not permitted except with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.
- (3) Upon receipt, your motion will be filed if it is in proper order. No fee is required with this motion.
- (4) If you do not have the necessary funds for transcripts, counsel, appeal, and other costs connected with a motion of this type, you may request permission to proceed *in forma pauperis*, in which event you must execute form AO 240 or any other form required by the court, setting forth information establishing your inability to pay the costs. If you wish to proceed *in forma pauperis*, you must have an authorized officer at the penal institution complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.
- (5) Only judgments entered by one court may be challenged in a single motion. If you seek to challenge judgments entered by different judges or divisions either in the same district or in different districts, you must file separate motions as to each such judgment.
- (6) Your attention is directed to the fact that you must include all grounds for relief and all facts supporting such grounds for relief in the motion you file seeking relief from any judgment of conviction.
- (7) When the motion is fully completed, the original and at least two copies must be mailed to the Clerk of the United States District Court whose address is
- (8) Motions which do not conform to these instructions will be returned with a notation as to the deficiency.

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MOTION UNDER 28 USC § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY

United States District Court		District Southern District Of California
Name of Movant Raul Alvarado	Prisoner No. 75922-198	Case No. 3:13-cr-01128
Place of Confinement FCI Victorville Med II		
<div style="display: flex; justify-content: space-between;"> <div>UNITED STATES OF AMERICA</div> <div>v. <u>Raul Alvarado</u> (name under which convicted)</div> </div>		
MOTION		
1. Name and location of court which entered the judgment of conviction under attack <u>United States District Court For The Southern District Of California(San Diego)</u>		
2. Date of judgment of conviction <u>November 08, 2013</u>		
3 Length of sentence <u>188 Months</u>		
4. Nature of offense involved (all counts) <u>21 USC 841(a)(1) Conspiracy to Distribute Methamphetamine</u>		
5. What was your plea? (Check one) (a) Not guilty <input type="checkbox"/> (b) Guilty <input checked="" type="checkbox"/> (c) Nolo contendere <input type="checkbox"/>		
If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details: <u>N/A</u>		
6. If you pleaded not guilty, what kind of trial did you have? (Check one) (a) Jury <input type="checkbox"/> (b) Judge only <input type="checkbox"/> N/A		
7. Did you testify at the trial? Yes <input type="checkbox"/> No <input type="checkbox"/> N/A		
8. Did you appeal from the judgment of conviction? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		

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9. If you did appeal, answer the following:

- (a) Name of court N/A
- (b) Result _____
- (c) Date of result _____

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications or motions with respect to this judgment in any federal court?

Yes ☐ No ☒

11. If your answer to 10 was "yes", give the following information:

(a) (1) Name of court N/A

(2) Nature of proceeding _____

(3) Grounds raised N/A

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☐N/A

(5) Result _____

(6) Date of result _____

(b) As to any second petition, application or motion give the same information:

(1) Name of court _____

(2) Nature of proceeding _____

(3) Grounds raised N/A

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(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☐

(5) Result

N/A

(6) Date of result

(c) Did you appeal, to an appellate federal court having jurisdiction, the result of action taken on any petition, application or motion?

(1) First petition, etc.

Yes ☐ No ☐

(2) Second petition, etc.

Yes ☐ No ☐

N/A

(d) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

N/A

12. State *concisely* every ground on which you claim that you are being held in violation of the constitution, laws or treaties of the United States. Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting same.

CAUTION If you fail to set forth all grounds in this motion, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in these proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you have other than those listed. However, you should raise in this motion all available grounds (relating to this conviction) on which you based your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The motion will be returned to you if you merely check (a) through (j) or any one of the grounds.

(a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily or with understanding of the nature of the charge and the consequences of the plea.

(b) Conviction obtained by use of coerced confession.

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- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impanelled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground one: Petitioner is serving an illegal sentence based on the Supreme Court ruling in Johnson v. United States
Supporting FACTS (state briefly without citing cases or law) In Johnson the Supreme
invalidated the use of the Residual Clause to enhance a
Federal sentence. Petitioner was sentenced as a Career
Offender based on the use of the Residual Clause. Petitioner
is serving an enhanced sentence based on the Supreme
Court ruling in Johnson. This sentence should be vacated.

B. Ground two: Proposition 47 reduced Petitioner's prior felonies
to misdemeanors.

Supporting FACTS (state briefly without citing cases or law): Petitioner was
sentenced as a Career Offender based on prior felonies
in San Diego County for case numbers SCN120652, SCN118468,
and SCN090042. Proposition 47 reduced all of these prior
felonies to misdemeanors. Petitioner is therefore no
longer eligible for the Career Offender enhancement.

C. Ground three: N/A

Supporting FACTS (state briefly without citing cases or law): N/A

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(e) On appeal N/A(f) In any post-conviction proceeding N/A(g) On appeal from any adverse ruling in a post-conviction proceeding N/A

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at approximately the same time?

Yes ☐ No ☒

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes ☐ No ☒

(a) If so, give name and location of court which imposed sentence to be served in the future: _____

N/A(b) Give date and length of the above sentence: N/A

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes ☐ No ☒

Wherefore, movant prays that the Court grant him all relief to which he may be entitled in this proceeding.

Signature of Attorney (if any)

Raul Alvarado

I declare under penalty of perjury that the foregoing is true and correct. Executed on

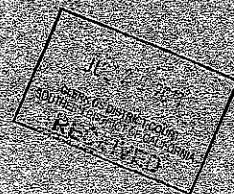
June 22, 2016

(date)

Signature of Movant

Raul Alvarado

Raul Alvarado
Reg No. 75922-198
Federal Correctional Institution
FCI Victorville Med II
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